



U.S. Department  
of Veterans Affairs

Veterans Health Administration  
Washington DC 20420

May 22, 2019

**FOIA Request No. 18-09916-F**

Mr. Brad Racino  
MuckRock  
[57381-93750301@requests.muckrock.com](mailto:57381-93750301@requests.muckrock.com)

Dear Mr. Racino:

This letter is the initial agency decision to your July 3, 2018 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the VA FOIA Service for

1. Any and all "referrals and notifications of Violations of Criminal Conflict of Interest Statutes & other Potential Violations files" pursuant to section 1030.4 of the control schedule, related to VA employees in San Diego & Los Angeles facilities for the past five (5) years.
2. Any and all medical inspectors investigation records and medical inspectors site visit reports pursuant to sections 1160.1 and 1160.2 of the control schedule, related to VA facilities in San Diego & Los Angeles for the past 5 years.
3. Any and all research misconduct case records involving allegations referred for an inquiry and/or investigation research misconduct case records involving allegations that are not referred for an inquiry and/or investigation and case records maintained throughout VHA for government wide suspensions and debarments based on research impropriety, pursuant to sections 8600.1, 8600.2 and 8600.3 of the control schedule, related to VA facilities in San Diego and Los Angeles for the past (5) five years.

Your request was referred to the Veteran Health Administration (VHA) Central Office FOIA Office. Your FOIA request was received in my office on August 7, 2018.

Regarding line item 1, criminal activity falls under the purview of the VA Office of Inspector General (OIG). The VA OIG has its own FOIA Office, please submit your FOIA request directly to OIG at their FOIA electronic mailbox, [vaoigfoia-pa@va.gov](mailto:vaoigfoia-pa@va.gov).

Regarding line item 2, the documents which exist that are responsive are reports conducted in response to investigate allegations lodged with the Office of Special Counsel (OSC). Therefore, although the Office of the Medical Inspector (OMI) lead a VA team investigating the OSC allegations, the report(s) created as a result of the investigation into OSC allegations is an OSC report and is not a document which is owned by VHA. OSC is another federal agency and as such they have their own FOIA Office, <https://osc.gov/Pages/FOIA-Resources.aspx>. Please submit your FOIA request directly to OSC via the information found at: <https://osc.gov/Pages/FOIA->

[Resources.aspx](#). In addition, OSC also posts their reports on their public website, <https://osc.gov/Pages/Public-Files-FY2019.aspx>.

Regarding line item 3, the Research Misconduct Officer with the Office of Research Oversight Office (ORO) conducted a search for documents responsive to your request. The search was conducted by utilizing the search criteria specified above in the request. ORO has determined that it has records for one (1) open and active research misconduct case at VA Greater LA. There are no other research misconduct cases that were open at either VA Greater LA or VA San Diego going back five (5) years from the date of the FOIA request

At the conclusion of the search, approximately twenty (20) documents totaling were determined to be responsive to your request relative to the VA facility in Los Angeles. My review of the documents revealed they contained information that falls within the disclosure protections of FOIA; specifically, FOIA Exemption 5, 5 U.S.C. § 552(b)(5) and FOIA Exemption 7, 5 U.S.C. § 552(b)(7)(A).

FOIA Exemption 5 permits VA to withhold a document or information contained within a document as "pre-decisional" if two requirements are met. First, if there is an identifiable deliberative process. Second, the agency generated the information or document as part of the agency decision process. Stated another way, VA may withhold information under Exemption 5 where the document or its content makes recommendations or expresses opinions about legal or policy matters during a decision-making process and the document is not the decision document or incorporated into the decision document. Additionally, as a matter of Federal policy, the agency must state an articulable, foreseeable harm to the agency or its activities that could occur as a result of release of the document or information.

My review of the documents identified as responsive to your FOIA request reveals that it contains information that falls within the protection of Exemption 5. All responsive documents are being withheld as the investigation is still open and ongoing. Therefore, these documents' status is pre-decisional as VHA's decision regarding the responsive records has not yet been made and release of this information would cause injury to the deliberative process. Also, as the research misconduct case is still open and active, there could be modifications to the current responsive records as they may not be in final format. The deliberative process privilege of Exemption 5 is invoked as it is determined that the release of the pre-decisional document to the public would negatively impact frank discussion on matters of policy between subordinates and supervisors. Additionally, it is my conclusion that the release would cause premature disclosure of proposed policies based on the recommendations before they are actually adopted thus creating public confusion from disclosure of reasons and rationales that were not in fact ultimately the grounds for an Agency action. Until a decision is made regarding the open and active research misconduct case at VA Greater LA, premature release of the documents may confuse the public, as the information contained within the report may not be consistent with the final actions of VHA. The Office of Research Oversight seeks a full, unbiased review of these records. Protection of the decision-making process will help to ensure this result. Consequently, VA denies your request for this information under FOIA Exemption 5, 5 U.S.C. § 552(b)(5).

My review of the documents identified as responsive to your FOIA request reveals that it contains information that falls within the protection of Exemption 7(A). Exemption 7 (A), permits VA to withhold a document or information in a document if

the Agency compiled the document for law enforcement records or information could reasonably be expected to interfere with enforcement proceedings. Stated another way, VA may withhold information under exemption 7(A) where there is a reasonable likelihood that disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, could interfere with currently ongoing enforcement proceedings. This exemption applies to information not initially obtained or generated for law enforcement purposes but that qualify under Exemption 7 as a record compiled for law enforcement purposes if it is subsequently recompiled into a protected law enforcement record. Specifically, the information covered by 7(A) consists of information which is currently part of an active and open investigation by the Office of Research Oversight. Consequently, VA denies your request for this information under FOIA Exemption 7(A), 5 U.S.C. § 552 (b)(7)(A).

If you disagree with my determinations to withhold the information under FOIA Exemptions 5 and 7(A), and/or if you disagree to the "no records" response, please be advised you may appeal to:

Office of the General Counsel (024)  
Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
Email: [ogcfoiaappeals@va.gov](mailto:ogcfoiaappeals@va.gov)

If you should choose to file an appeal, your appeal must be postmarked or electronically transmitted no later than ninety (90) calendar days from the date of this letter. Please include a copy of this letter with your written appeal and clearly state why you disagree with the determinations set forth in this response.

You may also seek assistance and/or dispute resolution services for any other aspect of your FOIA request, excluding the release determination, from VHA's FOIA Public Liaison and/or Office of Government Information Services (OGIS) as provided below:

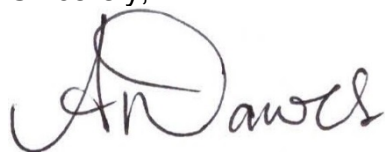
VHA FOIA Public Liaison:  
Email Address: [vhafioa2@va.gov](mailto:vhafioa2@va.gov)  
Phone Number: (877) 461-5038

Office of Government Information Services (OGIS)  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Fax: (202) 741-5769  
Mailing address: Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001

The VHA FOIA Office has not assessed fees for this request due to delay in responding. Please be advised we reserve the right to assess fees for future requests as appropriate. Thank you for your patience while we worked diligently to process your request.

If you need any further assistance or would like to discuss any aspect of your request, please do not hesitate to contact me at (561) 512-9077.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Dawes". The signature is written in dark ink on a white background.

Amarah K. Dawes, RHIA  
FOIA Officer